IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10143 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LILABEN RUPSING LODHA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 10143 of 2002

MR PRAVIN GONDALIYA for Petitioner No. 1

MS. NANDINI JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 30/04/2003

ORAL JUDGEMENT

Heard learned counsel appearing for the petitioner Mr. Anil S Dave and learned AGP Ms. Nandini

Joshi on behalf of the respondents.

2. In this petition under Article 226 of the Constitution of India, the petitioner-detenu has challenged the legality and validity of the detention order passed by the Police Commissioner, Rajkot City dated 11th September, 2002 in exercise of powers vested under him by Sub-Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act') branding the petitioner-detenu as Bootlegger within the meaning of Section 2(b) of the PASA Act.

2. The petitioner has challenged the legality and validity of the order of detention mainly on the ground that the order passed by the authority suffers from various infirmities and requires to be quashed.

3. The petitioner has been wrongly branded as Bootlegger. While dealing with this submission, Mr. P.S.Gondalia has taken me through the grounds for detention served to the petitioner. The petitioner is a lady and even as per the say of the authority, there is gap of more than 8 months in first two offences allegedly committed by the petitioner. The third offence registered with Pradyuman Nagar police station, Rajkot is of 31st August, 2002. The quantity of the country liquor allegedly recovered by the police is not also alarming. So, it is submitted that even for the sake of argument, if the petitioner is involved in the said activities, even then the activities of the petitioner cannot be said to be prejudicial to public order or public health, but at the most, it can be said to be prejudicial to the maintenance of law and order which is under the provisions of the Bombay Prohibition Act. This can be said to be adverse to the maintenance of law and order and not public order. It is also submitted that in similarly situated cases, this Court has allowed number of petitions and the petitioners/detenue are set at liberty.

4. The reply affidavit filed by the detaining authority is on record. I have carefully considered the stand taken by the other side. Of course, the authority has placed reliance not only on the fact that the petitioner is involved in three criminal cases punishable under Bombay Prohibition Act, but he has also placed reliance while recording subjective satisfaction on the facts stated by the two secret witnesses. According to me, there is no justification to the same in view of the facts emerging from the record in exercising privilege

under Section 9(2) of the Act. This goes to the root of the validity of the order and, therefore, the order of detention requires to be quashed on this ground also. The petition, therefore, is allowed.

5. In the result, this petition is allowed. the impugned order of detention dated 11th September, 2002 passed by the Police Commissioner, Rajkot City is hereby quashed and set aside. The petitioner detenu LILABEN RUPSING LODHA is set at liberty forthwith, if she is not required to be detained in any other case. Rule is made absolute. DS permitted.

(C.K.Buch,J)

Jayanti*